## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DOUGLAS ANDREW McKNIGHT Claimant	}
VS.	Docket No. 206 774
FRANK ANCONA HONDA Respondent	Docket No. 206,774
AND	
KANSAS MOTOR CAR DEALERS WCF % GALLAGHER WOODSMALL Insurance Carrier	

## <u>ORDER</u>

Respondent appeals from a preliminary hearing Order of February 8, 1996, wherein Administrative Law Judge Steven J. Howard awarded claimant benefits in the form of medical treatment and temporary total disability compensation finding claimant has suffered accidental injury arising out of and in the course of his employment with the respondent.

## **I**SSUES

- (1) Whether claimant suffered accidental injury on the date alleged?
- (2) Whether claimant's accidental injury arose out of and in the course of his employment with the respondent?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-501 states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 44-508(g) defines burden of proof as follows:

IT IS SO OPPEDED

"Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

Claimant must establish his burden by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

The evidence, in this instance, while somewhat contradictory, does support a finding for preliminary purposes that claimant suffered accidental injury on or about July 15, 1995, while in the employ of respondent. In so finding, the Appeals Board affirms the Order of Administrative Law Judge Steven J. Howard of February 8, 1996.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated February 8, 1996, should be, and is hereby, affirmed and remains in full force and effect.

II IS SO ORDERED.
Dated this day of April 1996.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: C. Frank Allison, Jr., Overland Park, KS Jeffrey D. Slattery, Kansas City, MO Steven J. Howard, Administrative Law Judge Philip S. Harness, Director